REMARKS

Claims 47-51, 72, and 73 were pending. No claims were previously withdrawn from consideration, and claims 1-46, 52-71, and 74-92 had been previously cancelled. By this response, no claims have been amended or cancelled, and claim 93 has been added. Support for new claim 93 may be found throughout the specification. Cancellation or amendment of any claim is not to be considered a dedication to the public of any subject matter.

Thus, claims 47-51, 72, 73 and 93 are currently under consideration.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 47-51 and 72-73 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,547,821 to Taylor et al. (hereafter "Taylor").

Applicants respectfully disagree.

Taylor does not teach a method of treating a patient with congestive heart failure including at least the steps of engaging the peripheral edge of an inflatable partitioning element with the wall of a ventricular chamber to *partition the chamber into productive and non-productive portions.* In particular, Taylor does not teach the step of *spacing a distal face of the inflatable partitioning element from a region of the ventricular wall defining the non-productive ventricular chamber*, as recited in all of the pending claims.

Taylor teaches an inflatable ventricular displacement device, as illustrated in FIGS. 12A-13. This device is inflated in the apex of the heart to displace fluid from the heart. Taylor's device does not partition the ventricle into productive and non-productive portions. Instead, Taylor teaches inserting an inflatable structure into the ventricle to displace volume from the ventricle. The ventricle is not divided into productive and non-productive portions, but instead blood is displaced by introducing a new chamber (the inflatable element) into the ventricle.

In particular, Taylor doesn't teach partitioning off a region of the ventricle between the ventricle wall and the distal face of the implant. In all of the variations shown and described in

Taylor, the space within the ventricular chamber around the implant is continuous, and would be part of the productive portion. Fluid, particularly blood, would be freely exchangeable around the implant of Taylor.

Specifically, Taylor doesn't teach engaging the wall of the ventricle with the peripheral edge to form a non-productive portion of the ventricle. The Office Action of October 24, 2008 points to a portion of FIG. 12B of Taylor to indicate the "peripheral edge". However, this peripheral edge is not engaged with the inflatable partitioning element to form a non-productive portion, as recited by the claims. In this figure, there is no engagement (i.e., no contact) between this peripheral edge of the inflatable element and the wall of the ventricle, and as a consequence, the regions labeled "productive portion" and "non-productive portion" by the Examiner are, in fact, continuous. The "non-productive portion" is mislabeled, because this portion is part of the productive portion. Because the peripheral edge (as labeled by the examiner) of the device shown in FIG. 12B does not engage the wall of the ventricle, the device cannot form a partition in the ventricle. The only portion of the inflatable device that is shown engaged with the ventricle wall is the region near the apex, which is quite distant to the peripheral edge of the device.

Furthermore, Taylor does not teach the step of spacing a distal face of the inflatable partitioning element from a region of the ventricle wall defining at least a portion of the non-productive portion of the ventricle. Instead, Taylor generally teaches that the walls of the inflatable device (or devices) "closely approximate the appropriate ventricular geometry of the healthy heart" (col. 17, lines 13-15). The distal face of the inflatable partitioning element of Taylor is not spaced from a region of the ventricular wall to define a non-productive ventricular chamber, as recited by the claims.

As discussed above, the pending claims require that the inflatable device form a non-productive region of the ventricle by both engaging the peripheral edge of the inflatable device with the wall of the ventricle, and by spacing the distal face of the inflatable element from a region of the ventricular wall. Taylor does not teach either of these limitations. To the extent that Taylor can be said to create a non-productive portion at all, it would be formed only by the

space within the inflated or expanded device, and is not formed of a region of the ventricular wall, as recited by the claims ("...a region of the ventricular wall *defining at least in part the non-productive ventricular chamber*"). In contrast to the methods taught by Taylor, it is the step of engaging the peripheral edge of the inflatable device and spacing the distal face of the implant that form the non-productive region recited in the pending claims.

Since Taylor does not teach all of the features recited in method claims 47-51, 72-73, and new claim 93, Taylor cannot anticipate these claims. The Applicants respectfully request withdrawal of the 35 U.S.C. §102(e) rejection of these claims over Taylor, and allowance of all of the pending claims.

INFORMATION DISCLOSURE STATEMENTS

The Applicants thank the Examiner for acknowledging the Information Disclosure Statement filed July 31, 2008. Applicants respectfully request that the Information Disclosure Statements dated April 26, 2007 and June 29, 2007 be considered, and the PTO Forms 1449 be initialed and returned with the next Action.

Additional references have been submitted in a Supplemental Information Disclosure Statement dated 12/31/2008. Applicants also respectfully request that this Supplemental Information Disclosure Statement be considered and the PTO Form 1449 be initialed and returned with the next Action.

CONCLUSION

Applicants respectfully request that the Examiner expedite the prosecution of this patent application to issuance. If the Patent Office determines that an extension of time and/or other relief is required, Applicants petition for any required relief including extension of time, and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 50-4050**, referencing 10078-703.201. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Date: January 26, 2009

By: _____

Richard D. Shoop
Registration No. 45,763

SHAYGLENN, LLP
2755 CAMPUS DRIVE, SUITE 210
SAN MATEO, CA 94403
TELEPHONE: 650.287.2164
FACSIMILE: 650.212.7562